Securities and Exchange Commission Historical Society
Interview with Bernard Meltzer
Conducted on September 24, 2005, by Kurt Hohenstein

KH: This is Kurt Hohenstein interviewing Professor Bernard Meltzer. I'm in Winona, Minnesota and the professor is in Chicago at his home, and we're doing this conversation on September 24, 2005 by telephone conference.

If you would, Professor, let's just start with a little background. Give me a little bit of your personal background, maybe a little bit about your education, your career, how you eventually got to the point where you came to the SEC.

BM: I graduated from the University of Chicago Law School in 1937. And one of my professors worked out with then-Professor Felix Frankfurter a fellowship for me at the Harvard Law School. I turned up there in the fall of 1937 and spent a year there.

KH: So you went to Harvard and did you work with Professor Frankfurter?

BM: He was my mentor; I took one of his seminars and wrote a couple of papers.

KH: How old were you when you graduated from the University of Chicago?

BM: When I graduated from the University of Chicago I was 22; I mean from the Law School. I also got my AB from the University of Chicago.

KH: So you were going to school in the beginning part of the Great Depression?

BM: Well it was really in the middle. I was in college at the beginning.

KH: What was the fellowship for when you went to Harvard Law? What were you doing?

BM: I took some courses that I hadn't taken and I went in part because I was relatively young and I was encouraged to do so by Professor Wilbur Katz, whom I greatly admired. And I also had a kind of sentimental journey because my brother had been a graduate student there. He had gone to Harvard Law School and he had died when he was a graduate student. So all that helped to bring me to Harvard; I had no intention of being a law professor at that time.

KH: What happened after you finished at Harvard with a fellowship? Where did you go then?

BM: I went to the SEC.

KH: Tell me a little bit about how you came to the SEC, what attracted you to work there, who were the people that got you involved in that?

BM: It was a fortunate accident. I was having dinner with a member of the *Harvard Law Review* and we met at Gannett House where the *Harvard Law Review* has its offices. And my friend said, "Well (there's) somebody here from the SEC interviewing Harvard Law Review guys." I said, "I'm a University of Chicago Law Review guy. I don't qualify." He said, "Don't be nuts; go in." So I went in and I was offered a job later on. I went to see Professor Frankfurter who said I should go see Jim Landis who had been Chairman of the SEC and had come back to Harvard Law School as its Dean. I do remember one thing that Professor Frankfurter said that stuck with me; he said, "If you can look at the law through a different window and if it's not very costly professionally or otherwise, you should do so." And Landis encouraged me to go and Felix encouraged me to go, so I went.

KH: Tell me what you think he meant by a different window.

BM: I mean looking at the law through the eyes of a government official rather than a private practitioner. I had assumed I would be going back to Chicago and practice law.

KH: He thought that maybe the experience of having a different way to look at the law or maybe different approach to this administrative agency, the SEC, would broaden your horizons?

BM: Exactly, exactly. He encouraged me to do that.

KH: Frankfurter was a pipeline for a lot of people that he sent to not just to New Deal agencies but specifically to the SEC.

BM: Yes.

KH: And it seems he was very much enthused about that particular agency. Did he talk at all about the agency itself?

BM: No, he didn't talk about the SEC as such. I had a vague idea as to what the SEC did. I was generally sympathetic to the New Deal although of course we still had high levels of unemployment until the defense buildup started. But it seemed to me a place of great challenge and at that time the firms in Chicago did not interview until you were ready to go to work. And although I felt my prospects were pretty good for a job in private practice I decided to accept this and indeed when I was in Chicago I did get an offer. And I said, "Oh no, I've given my word to the SEC." And then when I got there people were sort of surprised I turned up and were wondering what they should do with me.

KH: At the SEC?

BM: At the SEC.

KH: What did you do? What was your first responsibility?

BM: My first job was with the General Counsel's Office and I had a wonderful supervisor, Milton Freeman, and we wrote opinion letters and Milton had a wonderful capacity as a critic. I never experienced his making a proposed change unless there were a very good reason for it and he was very encouraging and shared the credit for any good ideas that emerged from our conversations. And if they emerged from me, he was very encouraging and very generous.

KH: What was his position?

BM: Well he was in the General Counsel's Office. He was a supervising attorney and I don't know exactly what title if any that he had.

KH: I would assume there are a lot of lawyers that were working with you at the time.

BM: There was one other University of Chicago graduate who I believe was also in the General Counsel's Office. That was Hubert Will who later came back to Chicago and became a Federal judge. After I wrote opinion letters I got involved with all sorts of litigation at the SEC.

KH: Let me ask you first about those opinion letters. What were you specifically doing in the General Counsel's Office?

BM: Someone from a company or law firm would write in and put a question and you wanted to be very careful and guarded and distinguish your opinion, the General Counsel's opinion, from the position of the Commission. It was a good way for a neophyte to get a sense of the statutory problems. And that was the point of entry for quite a few people in the General Counsel's Office.

KH: So you were addressing problems that people inside the SEC might have?

BM: No, no, we were addressing problems that came from outsiders.

KH: Okay.

BM: And very often the questions were quite abstract and we would want to get some facts and so on and so on.

KH: This is an agency that did a lot of advising, correspondence with companies, all kinds of people, individuals on a regular basis. This seems something that at least for the administrative state was just really a new kind of thing.

BM: Well it was very important because if the SEC suspended or denied your registration statement, the delay could kill you. That sanction was so powerful that the private sector and the SEC itself would try to avoid it if you were dealing with people who were making innocent mistakes rather than people out to take advantage of the ignorance of prospective investors.

KH: It was clearly an understanding that your role was to protect investors from unscrupulous companies that might be trying to deceive those folks, but you also had a real concern about legitimate businesses that maybe just didn't fully understand how the law worked.

BM: The possibility of unscrupulous people trying to manipulate the agency was there, but I think primarily we were trying to help people navigate through the statutes and also protect the interests of the SEC from binding opinions.

KH: You mentioned that you moved from doing the opinion letters at first to litigation. Talk a little bit about that.

BM: I don't know if the name O. John Rogge has appeared in your history. I did a fair amount of work with John and Chester Lane who was then General Counsel of the SEC. I'll mention several cases. One of them involved a market manipulation case, which really was all messed up when I was part of the new group sent in to clean it up, if we could. The Commission's brief to the Trial Examiner, as I think they were then called, was

about 500 pages. And the Trial Examiner had copied verbatim from the brief quite a few passages, including those with misspellings, and those with unhelpful references to the record. And we went in on a Sunday morning and worked right through to Tuesday morning, 5:00 a.m., and it fell to me to write the last part which dealt with the personal responsibility of particular brokers at this house.

The lawyers from the other side were very good lawyers. I think—I'm not sure—they were Sullivan & Cromwell. What they did in their brief to the Commission was to have one column showing passages of the Commission's brief to the Trial Examiner and then another column showing the identical passages in the Trial Examiner's report, with the misspellings and irrelevant record references underscored. And the brief to the Commission included the usual reference, at that time, to *Alice in Wonderland*, you know—"I'll be judge, jury and prosecutor, too"—and so on. And it was very embarrassing and we settled that case. But it was a Herculean effort. We were ready to participate in disaster relief after that.

And then there was a case involving Bank of America. And the underlying problem was the jurisdiction of bank examiners and the Comptroller of the Currency on the one hand, and the SEC on the other. And the SEC had gotten the bank examiner's reports, which were the basis for a subpoena that was somewhat over-broad. In any event it was a very interesting case and I remember that the Commission had and Donald Richberg made just a wonderful argument to Chester Lane. The SEC got up to a very hostile court and was

really pushed around. I had other instances with Chester Lane, who was a wonderful lawyer when the going was relatively smooth. But when things got tough, there was a change.

And I also was involved in a market manipulation case, which was argued before the 2nd Circuit and later on—well I'm jumping the gun. There's a very interesting case when I was working for Jerome Frank, but I had a very, very challenging time with my colleagues in the General Counsel's Office. John Rogge was a very interesting guy to work with because his marriage was unraveling and he had absolutely no interest in going home. And we'd sit around—four or five of us - and John or somebody else would dictate a half of a page and then it would be passed around. It was excruciating in the time that it took. But the work product on the whole was pretty good.

KH: Let me just ask one small question. You dictated the page, so you had some office secretarial staff always there?

BM: The relationship with the secretaries was really very, very interesting and it's one of my best memories. There was no paid overtime for secretaries and a lot of the secretaries lived in rooming houses or boarded with somebody and they got a meal along with their quarters. If we had a secretary come in after hours, we would set up a kitty which would pay for their dinner and for a cab home. So if you worked overtime and had a secretary, it cost you money and no one raised a question about that arrangement. And then when

the smoke would clear, the secretary would get time off to take care of her personal needs, and that's the way it worked at the SEC. I don't know how it worked at other places.

KH: So you found a way to make it work. If it's no indiscreet, let me ask you - do you know what your starting pay was there as an attorney?

BM: I think it was 1,800-bucks a year.

KH: We've talked to a messenger and administrative assistants, the secretaries right to some of the Division or the Unit Chiefs. Some were making pretty good money but it is interesting to hear the amounts that were paid originally.

What was the overall atmosphere of the SEC like? I've talked to some of the folks who were working there at the time and people have a remembrance of the nature, of the atmosphere that the SEC exuded.

BM: There was high morale and esprit de corps, and you thought you were working on the side of the angels. And some people thought they were saving capitalism and some people thought they were protecting the innocent against being exploited by the unscrupulous, and there were a lot of good people around. Commissioners were an intelligent group and I lived with six other SEC lawyers, somewhat parochial, but they

were all good people and interesting people and it was really a great atmosphere as I remember it.

KH: Was William Douglas the Chairman when you came?

BM: William Douglas was the Chairman when I came.

KH: Did you have any either direct or indirect contact with Justice Douglas personally?

BM: No.

KH: Was he part of that sort of spirit that you just described?

BM: He may have influenced it, but there was such a distance between him and me that I'm not quite sure what his role was. He set the standards for recruitment and he himself was a person of great intellectual power. I think that his influence directly or indirectly affected the rest of us.

KH: Even though you had no direct or indirect contact with him, your experience is that everybody that you worked with had this feeling and this attitude and this esprit de corps that may or may not have been directed from the top. It probably as much came from the bottom as it did from the top.

BM: It just came, I think, from total interaction, the work and stuff.

KH: The SEC has been described as a lawyers' agency. Does that make sense to you?

BM: We did have a Chief Accountant because one of my fond memories which you brought to the surface now was this. I'd had a course in accounting in law school, not bookkeeping but just a theoretical basis, and the Chief Accountant wanted to issue some regulation. I went to work and I got the Commission—I forget whether I was in the General Counsel's Office or working for Jerome Frank then - to reject that proposal so that was a plus for inter-disciplinary cooperation.

Most of the Commissioners have been trained as lawyers and as I say, we had a very good group of lawyers there, and particularly during the formative stages when you had to work out the issues raised by the statutes. I assumed that the lawyers would play an important role. But I never thought about the other folks there. I don't know if we had any people who were investigators who did not have legal training.

KH: They had some people who were either entry level folks or beginning to be accountants who were given the task of going over to the FTC for example and accumulating this information and bringing it back to the financial people and the lawyers, and they were the ones that were the groundwork investigation.

BM: The grunt work.

KH: How long were you at the SEC?

BM: I was at the SEC from 1938 to 1940.

KH: There was a third case you were talking about.

BM: When Bill Douglas went over to the Supreme Court, Jerome Frank became Chairman and, much to my surprise and pleasure, I was asked if I would like to be his—I don't know what title—Legal Assistant, Special Assistant, and so I moved over to work for Jerome Frank. In 1939 there was a case arising out of the Public Utility Holding Company Act, *Consumers Power*, and a major figure in that corporate group was Wendell Willkie, who already was looming as the possible Republican nominee for President in 1940. And Chairman Frank said, "Get into the *Consumers Power* case," since I knew nothing about the Public Utility Holding Company Act except that it existed. I designated myself as the rewrite man and the opinion was written in the Public Utilities Division. I think the person who brought it around was Dave Ginsburg.

Now Frank had been the swingman on two basic issues. One went to capital structure - that was to say these folks wanted to issue some bonds and some stock. And they also

have hired Morgan Stanley without competitive bidding. I think the opinion as it came to us said that the only way to find out whether the spread was okay was through competitive bidding, although the statute didn't require that. And I think that there was one wing of the Commission that said that the issuance of bonds merely to refund at lower interest rates the existing bonds was okay. In addition, if the utility wanted to issue some additional bonds and some common stock and I think Healy and Mathews said, "Sure, they ought to be able to issue the additional bonds because interest rates are low and this would be appropriate." The other wing of the Commission led by Henderson and I forget who his…

KH: Is that Leon Henderson?

BM: Leon Henderson. The other said that the whole thing was tainted because there was no competitive bidding and so they were against the whole thing. Well I went through the opinion as it came and I decided that Frank's original position was wrong and he shifted in the middle. I think he shifted on competitive bidding; I think he also said that they could issue enough bonds to refinance the existing bonds but maybe he said the additional bonds should be replaced by stock. I was not exactly a popular person with the Public Utilities Division. But Frank in part because of this history and maybe you could check it out to see whether I'm right in my recollection of the lineup on the various issues, but in part because of this shift of position, everybody was trying to meet the other side's arguments and Frank's opinion was getting fatter and fatter.

Frank wrote a very long introduction about the philosophy underlying the Public Utility Company Act. By that time our relationship was such that I felt it was all right to send him a proposed substitute with this little note—"I know this is shorter; I think it's better. And he sent for me and he said your stuff is really great; I'm going to attach it as a summary." Boris Bittker, who was Frank's clerk when Frank went on the 2nd Circuit, said that he had exactly the same experience when he was his clerk.

I did read the transcript of David Ginsburg's chat with and he has a somewhat different view of the history of *Consumers Power*. But I have a pretty clear recollection, which doesn't mean that I may not be wrong.

KH: There was a fellow that worked in the Accounting Division. I'm bringing it up because I just interviewed him not too long back—Francis Trainor. Do you know him at all?

BM: Francis Trainor?

KH: Trainor, T-r-a….

BM: It sounds—it sounds….

KH: He has a recollection which I thought was interesting and I'm just going to give it to you and tell me what your comments are. But he has a recollection; he actually worked in the Public Utility Holding Company Division also and he was assigned do the grunt work on this *Consumer Powers* case and he has a recollection that when Wendell Willkie would come to the Commission, he would never come down and talk with the accountants or the lawyers. He would always go right up to the Chairman; he said, "You have to come talk to me; I'm going to go talk to the Chairman." He had this sort of different kind of attitude.

BM: I wasn't aware of that. Did Trainor say anything about the issues and all?

KH: No, he wasn't involved in that part. He talked about how he was given the responsibility of uncovering all of the connections this huge holding company had and he said it was a monumental task just to figure out what went where and that was his job. They had to sort out the accounting side of this to see whether the consumers themselves were being fairly treated.

BM: And also geographical and so on.

KH: Exactly, exactly; he said it was a monumental task just to get that part and then of course he gave the information to his superiors and the attorneys like yourself that handled the case.

BM: What was very interesting was the interaction between the SEC staff and the attorneys and the lawyers from private firms that came to work on utility problems. They worked together and when there was no code, but I don't know how I got involved in a couple of these. But when we went out to lunch and these guys would want to go to some fancy place, we would go to Joe's Bar or something, but we all picked up our own check. Nobody told us to do it, but intuitively we felt that was the right thing to do. But some of the relationships got very close because you worked together and very often you were trying to help these guys solve their problems in a legal way.

KH: Right; but you were also cognizant of the potential problem if in fact you got too close?

BM: Oh, yes indeed.

KH: Do you remember Richard Whitney's fall from grace?

BM: I remember it vaguely. I was not involved in it.

KH: It's one of sort of the great Douglas stories when Douglas sees this happening—he doesn't know it's happening behind the scenes and then it sort of helps him push some of the agenda of the SEC that he's trying to implement. And were you at all involved in the *Electric Bond* case?

BM: No.

KH: Any other cases that you were involved in that you want to talk about?

BM: The manipulation cases without computers were very hard to assemble because you had to relate rumors to trades and so on and so on, and you had these little slips of paper and I was involved in the brief to one of them in preparing for the argument before the Commission on the other. There was one story about Douglas that you might find of interest.

When Douglas was on the Supreme Court, he and I think Black did something extraordinary. They dissented from a denial of a petition for certiorari; at least Douglas did in at least two cases. Each of these cases had very difficult jurisdictional issues but also the petitioner was what we can call you know a little person.

And at that time there was a little boom for Douglas as President, as candidate for Presidency or Vice President, and the head of the Public Information retained me and said, "What shall we do with these cases?" I said, "Well there are these jurisdictional issues but in each case Douglas was looking after the little man. So we'll write it up—this young vigorous person recognized the jurisdictional issues, but those issues were chomped by the need for making sure that the little guy got justice." And so this was

given to one of the columnists. When the columnist got finished with it there was no reference to the jurisdictional issues you see and it was really quite an undisciplined, somewhat sententious but pro-Douglas essay in the news. I said, "I am not a person who can deal with political matters." I wasn't mentioned but I was embarrassed by the column.

KH: Right; well I think sometimes the jurisdictional stuff, journalists might have a difficult time in any cases.

BM: Oh yeah; it doesn't show their passion either.

KH: I know you weren't there that long but did you see the SEC change at all—the growth of the agency?

BM: I was in private practice for a short time in Chicago.

KH: After the SEC or before?

BM: This was after. My father had died and I had great pressure to come back, but I came back for maybe two months because Henderson went over to be in National Defense. And I got a call, "Come back to Washington." And I was unmarried. And then I didn't

get back to Chicago until I got out of the Navy in '46. I started to teach corporations but then because of our Dean wanting to give up the deanship and resume teaching corporations, I began to teach labor law. I loved teaching corporations. So I really got out of the area where I was following the SEC and its staff day-to-day.

So I didn't have any sense of what was happening to the agency, its output, or its morale. Of course there were a lot of changes that affected its recruitment power; one there wasn't FDR and the New Deal, and two, the invidious restrictions imposed by some law firms on hiring Jews or Catholics or blacks or women. They all began to fall by the wayside even before the Civil Rights Act.

I did get a sense when Milton Cohen came back to Chicago. I didn't know Milton very well in Washington, but he and his wife and my wife and I, we became close friends and I got from time to time word about SEC problems. But I really don't have a sense of what happened to the agency.

KH: Let me ask you about the hiring practices of the SEC and I know that there were a lot of Jewish lawyers that got hired there. In fact there were a lot of different kinds of lawyers that specifically found their opportunity lacking in other areas. They found this open. Talk about that a little bit.

BM: So far as I could see, the hiring of lawyers was wholly a-political. There was only one guy in the whole General Counsel's Office that people had a question about. He wasn't there for very long. If you take the people that I lived with—Herb Cohn, he was on *Harvard Law Review*; Martin Riger was Editor-in-Chief of *Columbia*; Sam Harris was on the *Yale Law Review*; who else—Maury Kaplan had been a Sterling Fellow at Yale, he had gone to Northwestern I think; Bill Moran—I'm not quite sure where he got his education and Jack McDonald. So they were all people with sterling resumes and I worked with some of them. Sam Harris and I were reunited at Nuremberg where we both served on the prosecution staff. Hiring was open and I saw nothing that was inconsistent with my idea that this was a merit-based hiring system.

KH: They really wanted the sharpest legal minds.

BM: The best people they could get.

KH: It didn't matter whether you were Jewish or whatever.

BM: Oh no.

KH: They wanted the sharpest people.

BM: When you think of the people they had - Frank, Louis Loss, Milton Cohen—they'd all done well in eminent law schools and Douglas himself.

KH: Something to be said about this in retrospect is the way that this agency became the kind of agency it was - very efficient, very effective. People call it the most effective New Deal Agency, certain one of the longest lasting with respect to the kind of people that they got without regard to these other kinds of prejudices.

BM: Right; and indeed it was self-generating. It had the reputation of being a jewel.

KH: And a place of opportunity for really bright people.

BM: Right.

KH: I looked when I got your biographical form, and I frankly didn't know the work you did afterwards and I do want to talk a little bit about that because it is fascinating to me. Tell me a little bit about what happened after you left the SEC and you ended up in the National Defense Committee.

BM: When I came to the National Defense Commission, it was advisory and Leon Henderson was the Commissioner. I went to work for Stettinius; he was head of priority. I want you to know you are talking to the lawyer who drafted the priority order for machine tools,

new and second-hand—a guy who didn't know what a machine tool was when he started the drafting process. They had a lot of bright industry guys around.

KH: But I bet you learned what they were?

BM: I learned what it was and I learned to work with these guys. But I remember I had all the initials. I went into see Stettinius and I was ready to explain the different possibilities—why we chose this and that; I was prepared as if I was going to argue before the Supreme Court. Stettinius ran through the papers, looked intently at one page, the page with initials and he signed off, and I don't think he had the slightest idea about the content. This was a very important order.

Now we had no formal authority, so I had a little group and we went through all the legal problems that we might encounter and we had a bootstrap operation. We had stamped on all applications for a priority that willful falsification of a matter within the jurisdiction of the federal government was a felony. Well of course the question was whether this requirement for a written application, which had no statutory basis at that time, was within the jurisdiction. Nobody raised a question. Leon was sort of pushed aside and the industry guys came in and I may have been a little impatient. One of the guys I got to know when I was at the Defense Commission was Donnie Hiss, Alger Hiss's brother, and Donald had been lent by the State Department to the National Defense Commission. He said he was going back and he invited me to come.

KH: Going back to the State Department?

BM: Well he invited me to come and introduced me to Dean Atcheson, who was then an Assistant Secretary of State, and Dean Atcheson asked me to come and join his staff. Later I became head of the Foreign Funds Control Division. The day after Pearl Harbor, I turned up at a recruiting station and after I had my eye examination, the doctor looked at me and said, "Young man; do you know where I'd like you to be in this war?" I said, "No, sir." He said, "Well I'd like you to be a gunner in a Japanese boat." I was going to kill him.

I went back to the State Department, and after having been rejected as an Apprentice Seaman, I got myself a commission with a benefit of a couple waivers on my low vision. I was phoned by Frank Shea, who was the Assistant Attorney General when Jackson was Attorney General, who said, "did I want to be on the staff? I said, "Sure." And that's how I got to Nuremberg and then I came back.

When I was there I got a letter from the University of Chicago Law School—would I join the faculty—I was honored and all that and said, "Could it wait until I got back to reality." And I came and wobbled around for the whole summer and signed up.

KH: So you started back up again teaching at the University of Chicago Law School?

BM: Yes.

KH: Tell me a little bit about the experience at Nuremberg. What was your responsibility? What were you doing there?

BM: We dealt with a so-called economic case and I had a little unit and we prepared briefs on the so-called economic defendant headed by Shacht and I presented the case against Funk who was Shacht's successor. When I was there I was getting mail from my liberal friends in the states saying that Shacht would be acquitted because he was an international banker and he knew all the bankers, and the bankers would take care of him. Now that was really so wrong because everybody there was anxious to get Shacht. But I had made an independent appraisal of the evidence against Shacht and decided he would be acquitted. I learned later on that a guy in the British Civil Service had at the same time independently made a similar appraisal and had come to the same conclusion. I was one of the youngest people who had a speaking part, presenting part of the trial at Nuremberg, and it was suggested that since I was presenting the case against Funk, Shacht's successor, it made sense for me to present the case against both of them, which I was delighted to do.

But I thought that I should tell my superiors that I was getting this mail and that I thought Shacht was going to be acquitted and I didn't want them to be criticized on the ground

that they sent a boy to do a man's job. So I was relieved of presenting the case against Shacht and there was talk for a time about Jackson doing it himself, but he didn't do it and the guy who did it did a very good job—Ryeson Brady was his name - and he was maybe two days older than I was. Or younger—I forget, for these purposes we were twins.

We had all sorts of interactions with the Russians who were very hard people to deal with; and something I wrote I told about this story about Jackson. I don't know if you know that the Russian soldiers are absolutely quite infatuated with watches with Mickey Mouse faces.

KH: I hadn't heard that.

BM: Jackson had a birthday and we had a little PX and so a watch was presented to Jackson. And he said, "Where did you get it?" And some wag said, "From the Russians." And Jackson said, "That's great; that's really great. Up to now I haven't gotten even the time of day from them."

KH: Jackson always did have a way with words.

BM: He went to high school in the Jamestown area and he spent a year as a sort of post-graduate student at his high school. He had only a year at Albany Law School and then he read law and then he was one of the great stylists of the Supreme Court.

KH: This is an aside, but I'm teaching an introductory class for students to introduce them to law in society generally. We're actually the book about sort of genocide and war crimes is part of it, and I just read his opening statement for the Nuremberg trials.

BM: Oh yeah and the closing.

KH: And the closing and both of those are masterful.

BM: Forensic triumphs.

KH: People forget the power of the English language if it's used effectively—a really remarkable stylist all the way through his life and career.

BM: You're teaching in a law school?

KH: These are freshman students who are tipping their toe in to see if they would like the law, whether they would want to be lawyers down the road.

BM: I've often thought that some of the great briefs are potentially great instruments just for teaching.

KH: I agree.

BM: The beginning and end—the conclusion and saying what you want to say in different ways and trying to be simple.

KH: Right; evoking a feeling and a mood with a few words, which students—I mean if they learn how to do that and they learn nothing else about the law in this class, I'll be very satisfied with that; so very remarkable.

BM: Right.

KH: Well let me just ask a couple more questions about this.

BM: Sure.

KH: Looking back at your experience with the SEC and working for the government during a remarkable time in our history, what would you say are the accomplishments? Did the agency work like we thought it would? Did it change? Did it do what it was supposed to do?

BM: This would have to be a construct. When I was at the SEC, when I was working, I thought quite hard about the specific cases and I thought if we did a good job on the specific cases, we would be carrying out our obligation and we would be contributing to the agency doing a great job. I don't think I stopped to say overall are we carrying out our mission; in fact that sort of judgment would have been an act of faith anyhow.

KH: Absolutely.

BM: I didn't really know what the Securities and Exchange Commission was doing. It's easy enough to make that kind of statement but if you were serious about it you would have to do more work than I had done about these other matters. I had a feeling this was a staff that was bright and dedicated, industrious, and if we weren't doing the right job I don't know who could have done it. Well I suppose in that sense I felt that we were contributing.

As for its subsequent history, as I said once I got back, I didn't have the time, although I was always interested in it, I didn't have the time to follow day-by-day developments. I know there was a general feeling that the attitude about government change, you know big government was not the solution; it was the problem and so on and so on, and we had Nixon and Watergate and so a lot of things that raised question about our leadership and Vietnam and so it goes. Except for the Kennedy years, I don't think we had a kind of

incandescent personality who would be a magnet for young people with all sorts of opportunity. The opportunities were so much greater. I have a grandson who got out of a law school a year or so ago; somebody is paying him 125,000-bucks to start. The world has changed so much.

KH: The people that I've talked to that worked with the SEC have the same sort of attitude. They weren't looking at the big picture; they were looking at their particular job. And we talk about the denigration of government service, as sort of something that's happened. When people really start talking about government service, if the people that work for the government are really good people and they do a good job, you don't see them denigrated. It's the competency and it seems like the SEC was an agency that really exuded commitment and competency.

BM: I have no reason to doubt that it does so now but I don't have a firm basis.

KH: It was interesting to understand that this was an agency that had a commitment to a particular sort of mission and it followed that from top to bottom.

BM: Most of the lawyers there were eager to make sure that the guys on the outside were being treated fairly. It wasn't - get those guys. They're bad people and the end justifies the means.

KH: It wasn't an us versus them situation?

BM: Right.

KH: One thing that struck me about the correspondence when I was doing the archival research was the volume of letters that came from not only investors but a lot of businesspeople who were asking the SEC - you've got a new rule here; help me understand how I comply. And a good part of the work that folks like yourself and other folks in the SEC did was talking to these people about how you properly comply.

BM: Well I went down to the SEC for Mayer, Meyer, Austrian & Platt, which was the law firm I was associated with for a short time. This was a sale of assets by a company. And in the middle of the compliance, somebody in the SEC said the proxy statement had to show what preferred shares as well as common shares these guys owned and it was the summer and the guys were spread all over. And there was nothing in the regulations that required it. And so I went down and I said, "Listen; you guys are changing the rules in the middle of the game, you know." And I didn't make much headway with the first staff member, but I knew enough to appeal to the General Counsel. And I said, "If you guys want to have this rule, that's fine, but you should have showed in advance. A lot of people have relied on…" And immediately he agreed and said, "Go back and forget about it." And they didn't have pride of authorship and so on and somebody said, "Hey; this doesn't make any sense."

KH: There was a real sense I think of fairness.

BM: Right.

KH: It was basic fairness.

BM: Right.

KH: These were new regulations for everybody.

BM: They were tricky.

KH: Exactly.

BM: There was another case. Duker & Duker, there were these boiler rooms, guys that would mark up securities. I think I was then working for Frank, who was a wonderful person to work for incidentally. The question was, now how do we get a legal handle and get these guys out of business? And I remembered that I had read a case in property that if somebody sold you a diamond and that seller had superior knowledge you could sort of rely on his not exploiting his knowledge, and so I said, "Well when a securities guy is

their person and he has a mark-up we don't want to engage in price fixing, but there's an implicit statement that he's not too far above the norm."

KH: Right.

BM: And so that sold and Duker & Duker became law and that was the instrument which was used to get rid of all these boiler shops who were marking stuff up way beyond the norm. And this was based on this little old case I read in the property law.

KH: It was a common sense sort of fairness situation.

BM: Right, right.

KH: Which is to a great degree what the law really is.

BM: Well no; I think I've already said more than I know.

KH: We've actually got a couple more new names to people who worked in the agency just from these interviews but we're compiling this resource and some of it's already online. Yours will be online I think fairly soon. They're going to have to get it transcribed but this is a resource that I think people are going to absolutely enjoy because it gives us the real live person.

As a historian this is the kind of stuff that I think excites people. When I talk for instance on Tuesday to my students I can talk to them about I not only know a little bit about the Nuremberg trials but now I've talked to somebody who was there and this is the kind of thing that people—not just students—but open up their eyes, to. So on behalf of the Society, Professor, I want to thank you very much for the time that you've given us.

BM: Well it's my pleasure.

KH: This is an enormous resource that we're putting together and your kind efforts here have been very, very helpful.